IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.888 OF 2005
IN
NOTICE OF MOTION NO.1638 OF 2005
IN
SUIT NO.1526 OF 2005

M/s.Earth Builders. Appellants
vs.
1. Dani Sadan Co-operative Housing
Society Ltd. & anr. Respondents

Mr.P.K.Samdani with Mr.V.K.Merchant i/b.M/s.Kishore Thakordas & Co. for the appellants.

Mr.Aspi Chinoy, Senior Counsel with Mr.Tushar Cooper, Mr.Aziza Khatri & Mr.Aarti Jumani, advocagtes i/b.M/s.Hariani & Co. for the respondent no.1.

Mr.K.N.Gaikwad for the respondent no.2.

CORAM : R.M. LODHA &
D.G. KARNIK, JJ.

DATED : 6th December 2005

P.C.

The impugned order is in the nature of ad-interim relief. The notice of motion is still pending. The learned counsel for the appellants submits that appellants do not desire to prosecute this appeal on merits and all contentions raised in the appeal may be kept open to be agitated at the time of hearing of notice of motion and the hearing of notice of motion be expedited.

2. The prayer made by the learned counsel for the

appellants is fair and reasonable.

3. We, accordingly, allow the appeal to be withdrawn. We are satisfied that notice of motion deserves to be heard at an early date. We, therefore, grant liberty to the defendant no.1 (appellants herein) to apply to the learned motion Judge for fixing the early date of hearing of the notice of motion. All contentions of the parties are kept open to be agitated at the time of hearing of the notice of motion. Needless to say that the observations made in the impugned order are only for the purposes of consideration of ad-interim relief and shall not influence the decision in the notice of motion.

(R.M.LODHA, J.)

(D. G. KARNIK, J.)